

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 FEA-01 AGR-05 CEA-01 CIAE-00

COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05 L-02 LAB-04

NSAE-00 NSC-05 PA-01 RSC-01 AID-05 CIEP-01 SS-15

STR-01 TAR-01 TRSE-00 PRS-01 SP-02 OMB-01 NSCE-00

SSO-00 USIE-00 INRE-00 /083 W
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O 241053Z JAN 75

FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC NIACT IMMEDIATE 1517

C O N F I D E N T I A L BUCHAREST 0299

E.O. 11652: GDS

TAGS: EEWT, RO

SUBJECT: TRADE AGREEMENT NEGOTIATIONS

REF: STATE 016688

1. WE ARE VERY APPRECIATIVE OF PROMPT WASHINGTON RESPONSE SINCE WE REALIZE THE BURDEN IMPOSED BY REVIEWING SO LONG A TEXT. WE NEED SOME CLARIFICATION HOWEVER ON TWO OF THE POINTS RAISED IN REFTEL AND ONE OTHER POINT AND REQUEST NIACT REPLY ON PARAS 2,3 AND 4.

2. IF WE UNDERSTAND PARA 2(A) REFTEL CORRECTLY, PHRASE QUOTE EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT UNQUOTE WOULD BE ADDED TO SENTENCE (PENULTIMATE ONE) BEGINNING QUOTE AS PROVIDED IN THE GENERAL AGREEMENT ON TARIFFS AND TRADE THE PARTIES AGREE TO GRANT EACH OTHER'S PRODUCTS . . . UNQUOTE, AND LAST SENTENCE, BEGINNING QUOTE TO THE EXTENT THAT THE PROVISIONS OF THIS AGREEMENT . . . UNQUOTE WOULD BE DROPPED. THIS, HOWEVER, WOULD APPEAR TO US NOT TO COVER ANY CONFLICTS BETWEEN PROVISIONS OF THIS AGREEMENT AND PROVISIONS OF THE GATT
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OTHER THAN THOSE IN GATT ART I:1 (WHICH FORMS THE BASIS FOR

THIS PENULTIMATE SENTENCE) THAT WERE INCORPORATED IN THIS AGREEMENT. MARKET DISRUPTION PROVISIONS OF ARTICLE III AND ANNEX 1 OF THIS AGREEMENT WHICH CONFLICT WITH GATT ARTICLE XIX AND ROMANIAN ACCESSION PROTOCOL, FOR INSTANCE, WOULD NOT BE COVERED. WE THEREFORE PROPOSE FOLLOWING APPROACH INSTEAD: AT END OF PENULTIMATE SENTENCE ART. I:1 ADD QUOTE PROVIDED THAT TO THE EXTENT THAT THIS OR ANY OTHER PROVISION OF THE GATT IS IN CONFLICT WITH ANY SUBSEQUENT PROVISION OF THIS AGREEMENT, THE LATTER SHALL APPLY. UNQUOTE

3. RE ARTICLE 12 PARA 2(C) SUGGESTION (PARA 2.B. REFTTEL), DELEGATION LEGAL ADVISER BELIEVES PROPOSAL BUCHAREST 265 PREFERABLE ON FOLLOWING REASONING. PRESIDENT HAS NO AUTHORITY TO GRANT MFN EXCEPT ON CONDITIONS IN TITLE IV INCLUDING 402. SINCE FUTURE EMIGRATION SITUATION NECESSARILY UNKNOWN, CONCEPTUALLY NO AUTHORITY TO GRANT MFN BEYOND EXPIRATION OF 18-MONTH PERIOD UNLESS 402(A)(1), (2) AND (3), 402 (D) 407 (C)(3) CONDITIONS EXPRESSLY OR IMPLIEDLY INCORPORATED INTO GRANT OF MFN. THUS US CANNOT AGREE TO GRANT MFN TO ROMANIA FOR THREE YEARS WITHOUT SOME CONDITION RELIEVING US OF INTERNATIONAL OBLIGATION IF DOMESTIC AUTHORITY SUPPORTING THAT OBLIGATION DISAPPEARS. LANGUAGE IN INTRODUCTORY CLAUSE PARA (C) QUOTE UNABLE TO CARRY OUT ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT UNQUOTE CLEARLY REFERS BACK TO LANGUAGE IN PARA (B) QUOTE INCLUDING A PROBLEM CONCERNING ITS DOMESTIC LEGAL AUTHORITY TO CARRY OUT ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT UNQUOTE. IF THIS CIRCUMSTANCE AROSE, SO THAT US WOULD BE UNABLE TO CARRY OUT ONE OF ITS OBLIGATIONS, I.E. MFN, UNDER THE AGREE-
MENT, ON ABOVE REASONING US WOULD NEED RIGHT TO TERMINATE MFN OBLIGATION. HENCE PROPOSAL QUOTE EITHER PARTY UNQUOTE RATHER THAN QUOTE THE OTHER PARTY UNQUOTE. LATTER ONLY GIVES ROMANIA RIGHT TO TERMINATE.
FROM LEGAL POINT OF VIEW OF COURSE ONLY NEED RIGHT TO TERMINATE MFN ARTICLE, NOT WHOLE AGREEMENT. HOWEVER UNILATERAL RIGHT TO TERMINATE PARTICULAR PROVISIONS OF AGREEMENT REJECTED, FOR GOOD REASON, BY WASHINGTON AND

ROMANIANS. RIGHT TO TERMINATE PARTICULAR ARTICLE WITH
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AGREEMENT OF OTHER PARTY DOES NOT PROVIDE REQUIRED RIGHT FOR US TO TERMINATE MFN IN EVENT OF 402 PROBLEM. THEREFORE CONTINUE TO RECOMMEND QUOTE EITHER PARTY UNQUOTE IN PARA 2(C).

4. ROMANIANS RAISED ONE POINT, WHICH WE CONSIDER NON-SUBSTANTIVE BUT POTENTIALLY SENSITIVE AND ON WHICH WE AGREED TO SEEK PROMPT GUIDANCE. THEY NOW ADAMANTLY OBJECT TO WORD

QUOTE IMPOSE UNQUOTE IN ARTICLE III PARA 2 AS BEING INAPPROPRIATE TO RELATIONS BETWEEN STATES, PREFERRING INSTEAD QUOTE ADOPT UNQUOTE. THEY ALSO SUGGESTED SUBSTITUTING QUOTE MEASURES UNQUOTE FOR QUOTE RESTRICTIONS UNQUOTE, WHICH WE REJECTED. USE OF WORD QUOTE ADOPT UNQUOTE SEEMS ACCEPTABLE SYNONYM TO US IN VIEW OF UNDERSTANDABLE SENSITIVITY TO IMPLICATIONS OF TERM IMPOSE, ALTHOUGH WE RECOGNIZE IMPOSE IS TERM USED IN TRADE ACT. (IT SHOULD BE NOTED THAT ANNEX 1 OF US-USSR COMMERCIAL AGREEMENT CONTAINS A Milder SOUNDING FORMULATION, QUOTE TAKE APPROPRIATE MEASURES UNQUOTE, OF WHICH ROMANIANS UNDOUBTEDLY AWARE.)

5. OUR EXTENSIVE SESSION WITH NICOLAE YESTERDAY REVEALED MORE COMPLEXITIES ON THE ROMANIAN SIDE THAN WE AND FOR THAT MATTER THEIR TEAM HAD ANTICIPATED. WE DID SOME USEFUL CLARIFICATION OF LANGUAGE IN BOTH ROMANIAN AND ENGLISH BUT SPENT MOST OF OUR TIME ON ANNEX 2 TRYING TO DETERMINE WHAT ROMANIAN LAW ALLOWS IN THE WAY OF RIGHTS AND FACILITIES FOR EMPLOYEES OF FOREIGN BUSINESS WHO DO NOT HAVE REPRESENTATIONS ESTABLISHED. WE WILL CONTINUE THIS PROCESS TODAY AND WILL REPORT AS SOON AS POSSIBLE WE WILL ALSO BEGIN RECONCILIATION OF TEXTS IN THE TWO LANGUAGES. ON THIS SCORE, PLEASE CONFIRM AT SOME STAGE OUR ASSUMPTION THAT AMBASSADOR WILL BE AUTHORIZED AT APPROPRIATE POINT TO CERTIFY ROMANIAN AND ENGLISH LANGUAGE TEXTS AS HE DID WITH EXCHANGES AGREEMENT (STATE 268067).
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